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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,026

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EXAMINER

RUSH, KAREEN KAY

ART UNIT

PAPER NUMBER

4128

MAIL DATE

DELIVERY MODE

04/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,026	Applicant(s) DONNELLY ET AL.	
	Examiner KAREEN RUSH	Art Unit 4128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/5/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Mogil.
 - a. Regarding claim 7, Mogil teaches an insulating sleeve (in the below annotated Fig. 1) for a drinking vessel (in the below annotated Fig. 3), the sleeve having an upper opening (in the below annotated Fig. 3) and a lower opening (in the below annotated Fig. 1) which are spaced apart. The upper opening and the lower opening having a peripheral edge (in the below annotated Fig. 3) which, in use, extends about a part (in the below annotated Fig. 3) of the vessel. The sleeve having an elongate releasable closure means (in the below annotated Fig. 1) extending from the lower opening and adjacent to but below the upper opening (in the below annotated Fig. 1). The lower opening is enlarged to facilitate attachment of the sleeve to the drinking vessel (the elongated releasable closure means is zipped open causing it to enlarge then it is zipped closed around the stem causing it to reduce in size).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (6073796) in view of Kimishima (5238161).

b. Regarding claim 1, Mogil teaches an insulating sleeve (in the below annotated Fig. 1) for a drinking bottle (in the below annotated Fig. 3) of the type having a stem (or long slender part, in the below annotated Fig. 1) and a bowl (in the below annotated Fig. 3), the sleeve adapted to extend about the bottle and comprising insulating material (in the below annotated Fig. 3), the sleeve having an upper opening (in the below annotated Fig. 3, when the bottle and the insulating sleeve are turned upside down) and a lower opening (in the below annotated Fig. 1, when the insulating sleeve and the bottle are turned upside down), the upper opening having a peripheral edge (in the below annotated Fig. 3) which, in use, extends about the bowl of the bottle. The lower opening being smaller than the upper opening and adapted to extend about the stem of the bottle. The sleeve has an elongate releasable closure means (in the below annotated Fig. 1) extending from one opening and adjacent to but spaced from the other opening. The one opening is enlarged prior to receiving the bottle and then reduced so that the sleeve snugly receives the bottle (the elongated releasable closure means is zipped open causing it to enlarge then it is zipped closed around the stem causing it to reduce in size). Mogil DIFFERS in that it does not specifically disclose the drinking bottle is made from glass as claimed.

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Attention, however, is directed to Kimishima, which discloses another insulating sleeve holding a container made from glass (Kimishima, Fig. 1 at K). Kimishima teaches it is old and well known in the art to comprise a container made from glass. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Mogil by employing a bottle from glass, in view of the teachings of Kimishima, in order to have a hard brittle transparent, durable bottle that is capable of extensive reuse.

c. Regarding claim 2, Mogil teaches the elongate releasable closure (in the below annotated Fig. 1) extends from the lower opening (in the below annotated Fig. 1) and adjacent to but spaced below the upper opening (in the below annotated Fig. 1 and Fig. 3 at "space"). The lower opening is enlarged prior to receiving the bottle (the elongated releasable closure means is zipped open causing it to enlarge then it is zipped closed around the stem causing it to reduce in size).

d. Regarding claim 3, the elongate closure is a zip (in the below annotated Fig. 1).

e. Regarding claim 4, the upper opening of the sleeve comprises an edge of a band (in the below annotated Fig. 1 and 3), the band, in use, extending about the bowl of the bottle, the band being elastic (column 10, paragraph 2) to fit snugly about the bowl.

f. Regarding claim 5, Mogil DIFFERS in that it does not specifically disclose the insulating material is elastic as claimed. Attention, however, is directed to

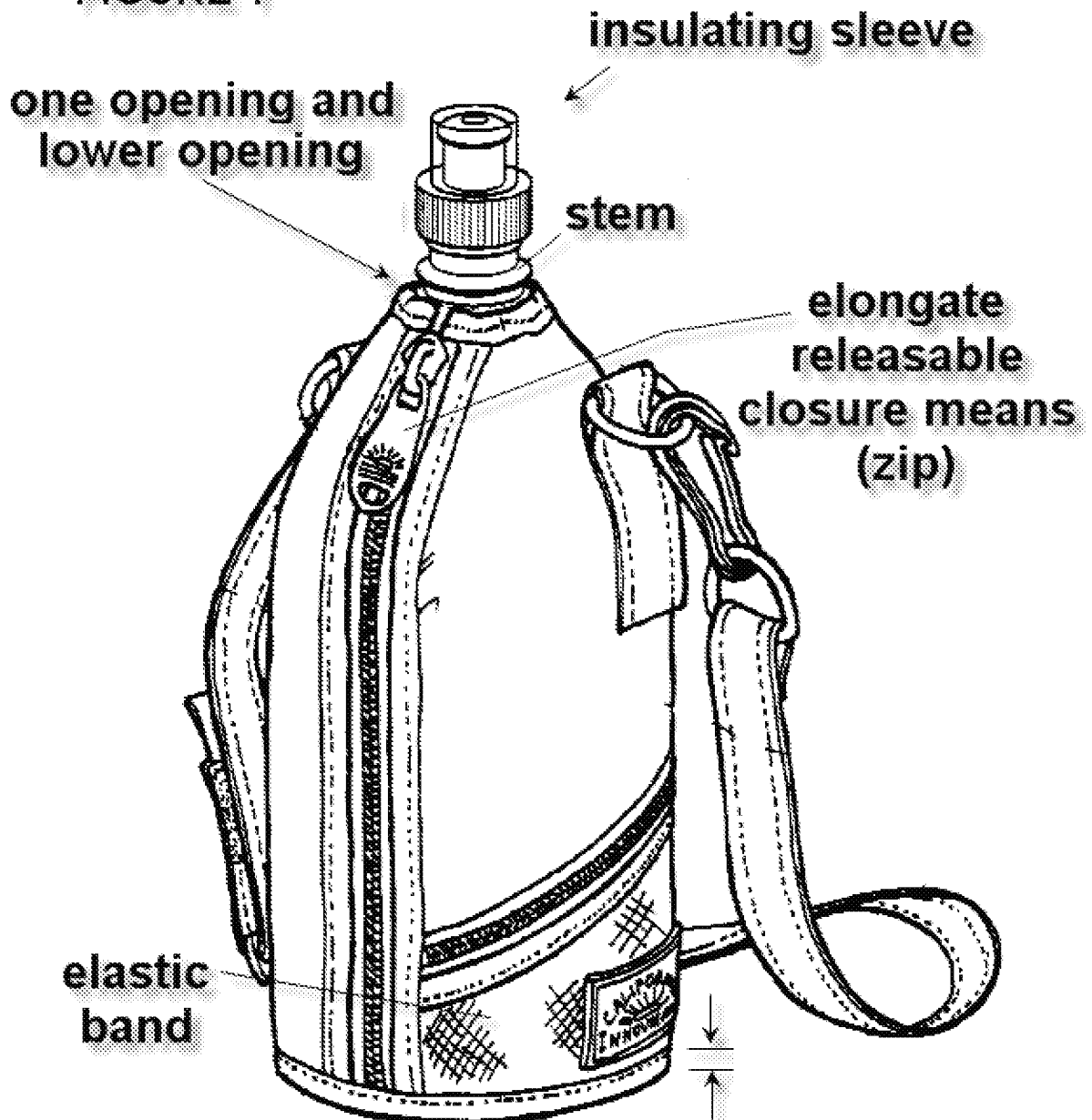
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Kimishima, which discloses another insulating sleeve made from a flexible or elastic material (Kimishima, Fig. 1 at K). Kimishima teaches it is old and well known in the art to comprise an insulator made from a flexible or elastic material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Mogil by employing an elastic or flexible insulating material, in view of the teachings of Kimishima, in order to have a yieldable material to limit slipping between the sleeve and the glass, and flexible material so the sleeve can be folded for storage.

g. Regarding claim 6, Mogil DIFFERS in that it does not explicitly teach that the lower opening has a diameter of 1-20mm. However, it would have been an obvious matter of design choice to a person of ordinary skill in the art to employ a lower opening with a diameter of 1-20mm because discovering a optimum or workable diameter opening would have been a mere design consideration based on the desired stem size. Such a modification would have involved only routine skill in the art to accommodate stem size requirement. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (*In re Aller*, 105 USPQ 233).

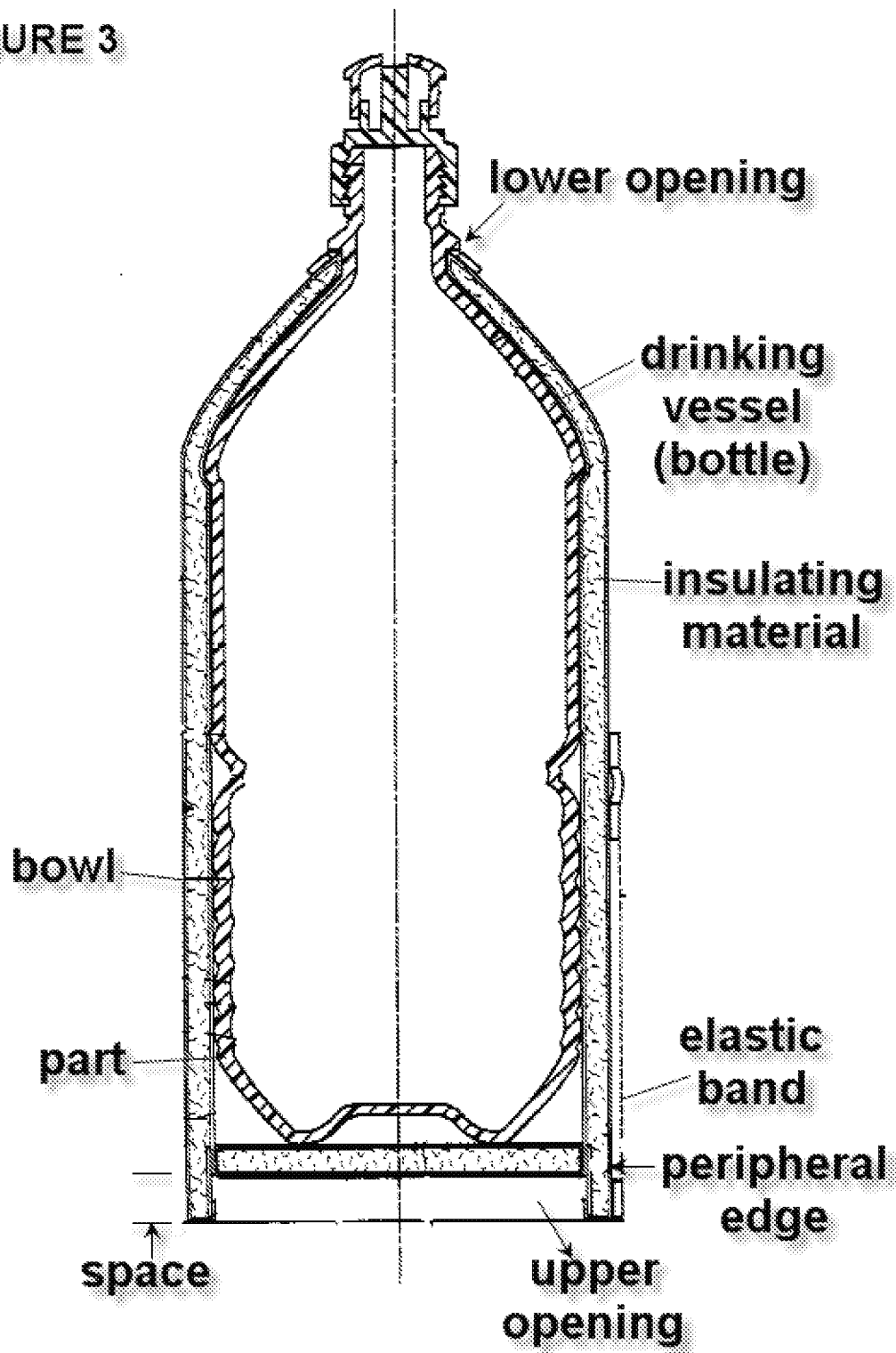
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FIGURE 1



"space" also refer to annotated Fig. 1
(zipper is spaced below the upper
opening when the sleeve is turned upside
down)

FIGURE 3



Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Melk reference discloses an insulated sleeve having a zipper. The Beggins reference discloses an insulated sleeve. The Kataoka reference discloses an insulated sleeve having an open top and bottom. The Hobson reference discloses an insulated sleeve having a zipper. The DeMarco reference discloses an insulated sleeve having a zipper. The Mann reference discloses an insulated sleeve having a zipper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREEN RUSH whose telephone number is (571)270-5611. The examiner can normally be reached on Monday-Friday (8:00 am - 5:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on (571)272-4888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

K.R.

AU 4128

/Khoa D. Huynh/

Supervisory Patent Examiner, Art Unit 4128